



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Furuno U.S.A., Inc.

File: B-231449

Date: August 29, 1988

DIGEST

Solicitation was not ambiguous as of deadline for receipt of proposals, and thus was not defective, where agency's intended interpretation was set forth in a letter signed by the contracting officer and sent to all potential offerors, including the protester, and offerors also were advised of the interpretation by telephone.

DECISION

Furuno U.S.A., Inc., protests the terms and conditions of request for proposals (RFP) No. N00024-88-R-5644(Q), issued by the Naval Sea Systems Command, Department of the Navy, for AN/SPS, Class B-2 radars. Furuno alleges that the solicitation is ambiguous, preventing competition on a common basis. We deny the protest.

The solicitation contemplated the selection, on a lowest-price, technically acceptable basis, of up to four navigational radars to undergo agency testing; based upon the test results, the Navy would approve one of the radars for production and exercise the production option in the contract for the selected radar. The applicable military specification (included as an attachment to the solicitation) defined the agency's requirement as one for "commercial, off-the-shelf, marine navigation radars," and also specifically required that the radars be approved by the Federal Communications Commission (FCC). In a letter dated April 29, 1988, issued in response to an inquiry concerning the timing for FCC approval, the contracting officer advised potential offerors that FCC approval was required at the time of offer submittal.

By letter of May 6, however, the contracting officer informed potential offerors that the April 29 statement had been in error, and that FCC approval would only be required prior to exercise of the production option with the selected

043124

contractor, and not at the time initial proposals were submitted.

Furuno challenges the Navy's May 6 interpretation on the basis that a radar lacking FCC approval does not satisfy the agency's commercial, off-the-shelf requirement, because a radar could not be sold or leased in the United States without prior FCC approval. Furuno maintains that its interpretation of the solicitation as requiring FCC approval prior to the closing date thus was reasonable, and that the May 6 letter created an ambiguity in the solicitation and precluded competition on a common basis.

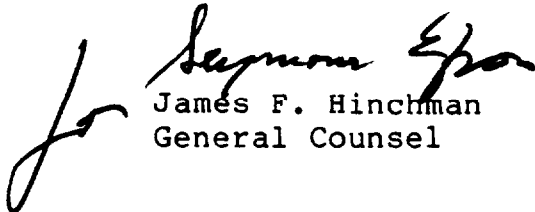
It is a well-established principle of federal procurement law that the government's specifications in a solicitation must be sufficiently definite and free from ambiguity to permit competition on a common basis. An ambiguity exists if specifications are subject to more than one reasonable interpretation. While it is not necessary for a finding of an ambiguity that the interpretation of the charging party be the most reasonable one, the party is, nevertheless, required to show that its interpretation of the requirement in issue is reasonable; to be reasonable, an interpretation must be consistent with the solicitation read as a whole and in a reasonable manner. Malkins Electronics International, Ltd., B-228886, Dec. 14, 1987, 87-2 CPD ¶ 586. When read as a whole, the solicitation here is not ambiguous as to the requirement for FCC approval.

The May 6 letter specifically and definitively changed the RFP's FCC approval requirement. Although not formally designated an amendment, the May 6 letter was in writing, was signed by the contracting officer, and, according to the agency, was sent to all potential offerors on May 6. These are the essential elements of an amendment under Federal Acquisition Regulation (FAR) § 15.606, and thus the letter in effect constituted an RFP amendment with the interpretation therein binding on all offerors. IBIS Corp., B-224542, Feb. 9, 1987, 87-1 CPD ¶ 136. This interpretation did not create an ambiguity with regard to the commerciality requirement; rather, in light of the express statement in the May 6 letter, we think it should have been clear to all offerors that the commerciality requirement had to be read in light of the relaxed deadline for FCC approval, i.e., a commercial-type radar could be offered even if not FCC-approved at the time of proposal submission.

Furuno claims it did not receive the copy of the May 6 letter mailed to it by the agency. This fact does not diminish the effect of the letter here, however. First, there is no indication that the alleged nonreceipt resulted

from deliberate action by the Navy. See Southern Technologies, Inc., B-228516, Jan. 21, 1988, 88-1 CPD ¶ 59. Further, Furuno's protest included a copy of the May 6 letter bearing a notation that it had been picked up at the agency on May 12, which was 5 days prior to the closing date for receipt of initial proposals. In this regard, the Navy states, and Furuno concedes, that it orally advised Furuno of the changed interpretation by telephone on May 6, when it called all potential offerors, and that it also informed Furuno that a copy of the letter was immediately available for pickup. Such oral advice of a change in the government's requirements followed up with written notices, as was done here, is consistent with applicable regulations. See FAR § 15.606; Great Lakes Roofing Co., Inc., B-228484, Feb. 2, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 100.

We conclude that Furuno was on actual and constructive notice of the agency's intended interpretation of the FCC approval requirement. Accordingly, the protest is denied.


James F. Hinchman
General Counsel